

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



7-84-LI

LANSING

MICHIGAN 48918

February 3, 1984

Joseph P. Bianco, Jr.
Vice President
Hudson's
1206 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Bianco:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to certain activities of Hudson's employees.

You indicate many of Hudson's officers and managers serve as officers or directors of community organizations such as The Economic Alliance of Michigan, Detroit Renaissance Corporation, New Detroit, Inc., United Foundation, and Detroit Institute of Art. Hudson's apparently encourages this type of community involvement and allows its officers and managers to work on behalf of community organizations during business hours and to use Hudson's research and secretarial staff, telephones, copy machines, etc. You ask how Hudson's and its officers and managers are subject to the Act when this time and effort results in lobbying on behalf of the community organizations.

The Act regulates all direct communication with officials in the executive and legislative branches of state government for the purpose of influencing legislative or administrative action. According to section 8(1)(b) of the Act, MCL 4.418, a lobbyist, such as Hudson's, must report:

1. Expenditures for food and beverages provided for public officials as specified in section 8(2).
2. All advertising and mass mailing expenses directly related to lobbying.
3. All other expenditures for lobbying.

It should be noted rule 56, 1981 AACS R4.456, requires that the food and beverage classification include all food and beverages provided public officials. In addition, the itemized information required by section 8(2) is to be reported when applicable. There is no purpose test for food and beverage; all must be reported, not just the food and beverages related to lobbying. The other two classifications apply only to lobbying expenses.

Hudson's encourages its officers and managers to be involved in the community organizations you have listed as part of Hudson's effort to be a good corporate

citizen of metropolitan Detroit. The economic connection between Hudson's business as a retailer and the charitable and booster activities of these organizations is so indirect the Legislature could not have intended that these pro bono activities be lobbying. This intention is supported by the fact that making these activities lobbying would discourage corporate participation on behalf of community organizations, an effect the Legislature would not seek. When the economic connection is merely tangential there is no lobbying because Hudson's is not paying the employee to lobby; it is paying the employee to assist the community organization. The Court in Pletz v Secretary of State, 125 Mich App 335 (1983), favorably quoted from a New Jersey case which defined the phrase "to influence legislation" as consisting of:

" . . . direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals." 125 Mich App 335, 350

Under the circumstances you have raised, Hudson's is not directly, expressly, and intentionally communicating with public officials. Of course, should the lobbying efforts of one of these community organizations have a direct effect upon Hudson's economic interests, for example, lobbying for unemployment compensation reform, Hudson's would be compensating its employee for lobbying. If you have a situation where the community organization is going beyond traditional charitable and booster activity, it is suggested you request an interpretation concerning those specific facts.

As pointed out above, a lobbyist must report food and beverages provided public officials regardless of the purpose for providing the food and beverages. If a Hudson's employee buys lunch for a public official and Hudson's reimburses the employee for the lunch, the cost of the public official's lunch must be reported by Hudson's. This is true even if the entire lunch was spent discussing the legislative needs of a community organization or if there was no lobbying during the lunch.

A Hudson's employee who is lobbying on behalf of a community organization similar to the ones listed above is a lobbyist agent for that organization, if the employee is compensated or reimbursed by the organization and crosses the monetary threshold. Any compensation or reimbursement from Hudson's for lobbying on behalf of the organization is not reportable by Hudson's, the employee, or the organization and is not counted toward the threshold of \$250.00 which makes a person a lobbyist agent. The employee is a lobbyist agent only if the total compensation and reimbursement received in a twelve month period from Hudson's for lobbying on behalf of Hudson's and from community organizations for lobbying on behalf of the organizations is more than \$250.00. Once a person crosses this threshold and becomes a lobbyist agent, the person must report all compensation and reimbursement received for lobbying from an entity on whose behalf the person was lobbying. Perhaps this can best be described with a few examples:

A. Employee A does no lobbying except as an officer in New Detroit. Some of the lobbying is done on Hudson's time and using Hudson's

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materials and staff. New Detroit does not compensate or reimburse A except for travel expenses (which are excluded from the Act). Neither Hudson's nor New Detroit has made any reportable expenditures. Employee A has received no compensation or reimbursement which counts toward a lobbyist agent threshold.

B. Employee B has been compensated \$200.00 lobbying for Hudson's and reimbursed \$100.00 for non-travel lobbying expenses by New Detroit. Employee B is a lobbyist agent who must register as such. Hudson's must report the \$200.00 and New Detroit must report the \$100.00 as lobbyists, unless they have not yet reached the lobbyist thresholds, in which case the dollar amounts are counted toward the thresholds.

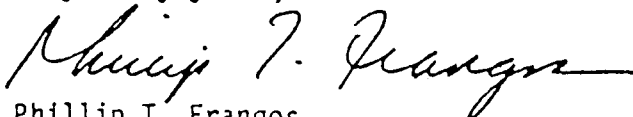
C. Employee C is a lobbyist agent for Hudson's. Hudson's and New Detroit are both lobbyists. Employee C spends three hours of Hudson's work time at \$25.00 per hour writing a letter to be sent to every legislator lobbying on behalf of New Detroit. The letter is copied and addressed by Hudson's at a cost of \$50.00. Employee C buys \$39.60 in stamps and is reimbursed that amount by New Detroit. Hudson's reports no expenditures; New Detroit reports expenditures of \$39.60; and Employee C reports expenditures of \$39.60.

You also ask whether Hudson's must account for its costs to analyze proposed legislation and administrative regulations. If Hudson's has not decided to lobby on a bill, any analysis done for the purposes of assisting the decision-maker in deciding whether to lobby is not counted. Once Hudson's has decided to lobby for or against a bill, the cost of preparing analysis and data summaries which are directly communicated to a legislator are reported. For instance, if you spend five hours researching and writing a memorandum to the person or committee who decides Hudson's official position on legislative bills suggesting Hudson's should support a bill, Hudson's decision is to support the bill, and your memo is retyped as a letter to the sponsor of the bill, then only the cost of retyping and mailing the letter are reported under the Act.

Finally, you ask whether you must report the cost of employee benefits when an employee's time is used for lobbying. Only the salary or wages of an employee are reported. Benefits, such as insurance, vacation pay, holiday pay, and retirement, are not included in the cost of the employee's time for the purposes of the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw



February 3, 1984

Hannes Meyers, Jr.
Roper, Meyers, Knoll & Jouppi
11 East Main
Zeeland, Michigan 49464

Dear Mr. Meyers:

This is in response to your inquiries concerning applicability of the lobby act (the "Act"), 1978 PA 472, to cities, city attorneys and city clerks.

Your letter of December 5, 1983, states as follows:

"With respect to myself as City Attorney, I am appointed by the City Council or City Commission in accordance with the Cities Home Rule Charter. I do not have a formal written contract, I serve at the pleasure of the Council or Commission. My work is compensated for on an hourly basis and the hourly rate is set by the Council or Commission.

With respect to the Clerks of the municipalities I represent, all are appointed by the Council or the Commission in accordance with the Cities Home Rule Charter. All are compensated by a salary, the amount of which is set by the Council or Commission.

The usual scenario for contact with a State Senator or State Representative goes something like this: The Council or Commission receives notice of proposed legislation that has or might have an impact on the City, for example, a bill allowing a school district to collect summer real estate taxes that involves the City or City Treasurer.

The City Council or City Commission may take a formal position on such a bill and instruct the City Clerk or the City Attorney to correspond with its State Senator or State Representative and urge adoption or rejection of the proposed bill."

You conclude by asking whether this activity subjects the city, city attorney and/or city clerk to the requirements of the Act.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." Pursuant to section 5(1), "legislative action" includes the "introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay or an official action" by a legislator on any pending or proposed matter. Thus, when a city directs its attorney or clerk to contact a state senator or representative and urge the adoption or rejection of a proposed bill, both the city and the individual are engaged in lobbying.

Persons who expend or are compensated a certain amount for lobbying are required to register with the Secretary of State as lobbyists or lobbyist agents.

"Lobbyist" and lobbyist agent" are defined in subsections (4) and (5) of section 5 as follows:

"(4) 'Lobbyist' means any of the following:

(a) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period.

(b) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official.

(c) For the purpose of subdivisions (a) and (b), groups of 25 or more people shall not have their personal expenditures for food, travel, and beverage included, providing those expenditures are not reimbursed by a lobbyist or lobbyist agent.

(d) The state or a political subdivision which contracts for a lobbyist agent.

(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses, or both, in a combined amount of \$250.00 in any 12-month period for lobbying."

Pursuant to section 6(1) of the Act (MCL 4.416), a "person" is an individual, a business or any "organization or group of persons acting jointly, including a state agency or a political subdivision of the state." According to sections 2(4) and 3(2) (MCL 4.412 and 4.413) and rules 21 and 22, 1981 AACRS R4.421 and R4.422, compensation paid or payable to employees for that portion of their time devoted to lobbying and all other payments related to lobbying, except travel expenses, are combined when calculating the threshold amounts established in sections 5(4) and (5). Therefore, if a city, in any 12 month period, pays its attorney and/or clerk a combined amount of more than \$1,000 for lobbying or more than \$250 on lobbying a single public official, the city must register as a lobbyist and file periodic reports. If either the city attorney or city clerk receives more than \$250 in salary for lobbying and/or reimbursement for lobbying expenses the attorney or clerk will also have to register as a lobbyist agent, unless otherwise provided by the Act.

Persons who are exempt from the Act's registration and reporting requirements are identified in section 5(7), which states in relevant part:

"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

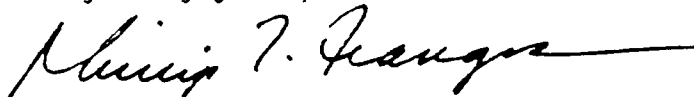
(c) For the purposes of this act, subdivision (b) shall not include:

(ii) Employees of townships, villages, cities, counties or school boards."

In the attached letters to Mr. Don M. Schmidt and Mr. Kenneth F. Light, dated January 13, 1984, and January 24, 1984, respectively, the Department indicated the exemption found in section 5(7)(b) applies only to elected or appointed public officials who serve in autonomous, policymaking capacities. According to your letter, both the city attorney and city clerk operate under the direction or control of the city council or commission. Consequently, the city attorney and city clerk are not exempt public officials but are city employees who are subject to the Act's provisions pursuant to section 5(7)(c)(ii).

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



6-84-LI

LANSING

MICHIGAN 48918

February 3, 1984

Mr. William F. Harsen, M.P.H.
Executive Vice President
United Health Organization
777 Livernois
Ferndale, Michigan 48220

Dear Mr. Harsen:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472. I understand that United Health Organization ("U.H.O.") is a non profit Michigan corporation which engages in "two principal activities: disease detection and community health education." In this latter work you print and distribute 5 newsletters per year to a list of some 500 persons, "some of whom may be public officials." Your specific question is:

"If we write articles in this letter about current pending health legislation and said articles reflect a position on this legislation, is this activity considered lobbying as defined in the . . . Act?"

"Lobbying", as that term is used in the Act, is defined as:

" . . . communicating directly with an official in the executive . . . or . . . legislative branch of state government for the purpose of influencing legislative or administrative action" (MCL 4.415(2))

"Influencing" means "promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies or analysis." (MCL 4.415(3)) (emphasis added)

You advise that your newsletter is sent to persons who "may be public officials." You should be aware that the term "public official" has a specific meaning when used in the context of the Act. MCL 4.416(2) defines "public official" as "an official in the executive or legislative branch of state government," and "official in the executive branch" includes "governor, lieutenant governor, secretary of state, attorney general, member of any state board or commission, or an individual who is in the executive branch of state government and not under civil service . . . (and) includes an individual who is elected or appointed and has not yet taken, or . . . who is nominated for appointment to, any of the offices" set forth above. "An official in the execu-

tive branch does not include a person serving in a clerical, nonpolicymaking, or nonadministrative capacity" (MCL 4.415(9)).

An "official in the legislative branch" includes " . . . a member of the legislature, a member of an official body established by and responsible to the legislature or either house thereof, or employee of same other than an individual employed by the state in a clerical or nonpolicymaking capacity." (MCL 4.415(10)) ;

The Michigan Court of Appeals in Pletz v Austin, 125 Mich App 355 (1983), in discussing section 5(7)(a) of the Act, analyzed the press exemption as follows:

"We believe that the Legislature intended that communications with public officials for purposes of gathering and disseminating news to be outside of the act's coverage

* * *

The press exemption properly excludes the acts of talking and writing to public officials for purposes of gathering news and information for dissemination.

* * *

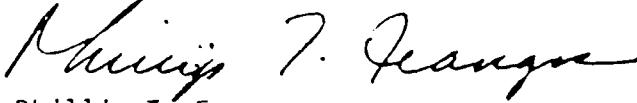
The crucial element . . . is that communications to public officials were not made 'for the purpose of influencing official action.'"
125 Mich App 355, 361-362

In the light of this determination by the Court of Appeals, it is the Department's position that gathering and assembling of news is not lobbying, nor is talking or writing to public officials to gather news and data for dissemination. Also, the publication of news, including editorial comment and the distribution of the publication to a public official is not lobbying unless the sole purpose of the publication is lobbying. In other words, even though a public official receives a publication because he or she is a subscriber, a member of the organization that publishes the publication, or a recipient of a complimentary copy, the publication costs are not lobbying expenses because there is no "lobbying."

William F. Harsen
Page 3

Because you failed to adequately describe the publication about which you are concerned, it is impossible to specifically answer your question. Therefore this response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



1-84-LD

LANSING

MICHIGAN 48918

February 7, 1984

Mr. S. Don Potter
Michigan Municipal Electric Association
818 Cowley Avenue
East Lansing, Michigan 48823

Dear Mr. Potter:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to an annual Legislative Reception and Fish Fry held by the Michigan Municipal Electric Association ("MMEA"). You set forth the following facts in your letter:

"All members of the Michigan House and Senate are individually invited, and in the past their staff members also have attended in significant numbers. Many MMEA Members and Associate Members also attend. Members are persons directly involved in the operation of municipally-owned electric utilities, usually managers, employees, and governing body members, the latter being either appointed or elected officials. Associate Members are representatives of companies or firms who provide goods and services to municipally-owned electric utilities. Attendance on the part of Members and Associate Members is purely voluntary, and they receive no compensation for the time spent or any expenses involved to attend the function from any source. Each Member and Associate Member donates \$50.00 per person to help defray the costs of this activity."

Your questions are set out and answered below:

"1. Is this function considered lobbying?"

"Lobbying" is defined in section 5(2) of the Act, MCL 4.415, as "communicating directly with . . . an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The purpose of holding the reception includes creation of good will and providing a place for members and associate members to meet with each other and with Legislators. This is an annual event which is scheduled regardless of whether there are bills pending in the Legislature of concern to MMEA or its members and associate members. While some lobbying may well take place at the reception, the event itself is not lobbying.

"2. If so, how should the expenses be accounted for?"

Section 8(1)(b)(i) of the Act, MCL 4.418, requires lobbyist and lobbyist agents to report "expenditures for food and beverage provided for public officials as specified in subsection (2)." Section 8(2) states:

"(2) Expenditures for food and beverage provided a public official shall be reported if the expenditures for that public official exceed \$25.00 in any month covered by the report or \$150.00 during that calendar year from January 1 through the month covered by the report. The report shall include the name and title or office of the public official and the expenditures on that public official for the months covered by the report and for the year. Where more than 1 public official is provided food and beverage and a single check is rendered, the report may reflect the average amount of the check for each public official. If the expenditures are a result of an event at which more than 25 public officials were in attendance, or, are a result of an event to which an entire standing committee of the legislature has been invited in writing to be informed concerning a bill which has been assigned to that standing committee, a lobbyist or a lobbyist agent shall report the total amount expended on the public officials in attendance for food and beverage and shall not be required to list individually. In reporting those amounts, the lobbyist or lobbyist agent shall file a statement providing a description by category of the persons in attendance and the nature of each event or function held during the preceding reporting period." (emphasis added)

Unlike the other two general categories of expenditures which must be reported, expenditures for food and beverage provided public officials are not qualified by the phrase "for lobbying." This is a legislative determination that all food and beverages provided public officials by a lobbyist or lobbyist agent must be reported, regardless of the reason for those expenditures. Because MMEA is a lobbyist and is providing food and beverage to public officials, MMEA must report the expenditures for food and beverage provided for public officials.

"3. What sort of records should be kept? Must we keep a record of each attendee by name and address? In the past, some 75 Senators and Representatives have attended."

As indicated in the emphasized portion of section 8(2) quoted above, since more than 25 public officials will be in attendance, MMEA does not need to list the expenditures by individual public official. The records MMEA keeps must be adequate to compute the total amount spent for food and beverage provided public officials. Section 9(1)(b) also requires MMEA to record the names of all public officials in attendance and the nature of the event. In addition, should MMEA directly communicate with public officials at the reception for the purpose of influencing administrative or legislative action, MMEA must report any expenditures made for the communication and keep records sufficient to create the report.

"4. Does the \$50.00 donated by each Member and Associate Member count toward the 'threshold' described in the Lobby Registration Act? If so,

whose threshold, the individual, his or her employer, or the Association's?"

As indicated in the answer to your first question, the event is not lobbying. The \$50.00 donation to defray the expenses of the reception is not an expenditure for lobbying. It does not count toward the threshold for any person to become a lobbyist or lobbyist agent and is not reported by any lobbyist or lobbyist agent.

- "5. If no money was collected, and the expenses were paid by Association funds, would Members and Associate Members attending be required to report under the Act, and if so, what?"

This question is answered in the negative provided those in attendance do not lobby.

- "6. Is the time contributed by those persons who actually fry the fish a reportable item? These persons are employed by the Village of Sebewaing, the City of Bay City, and the City of Lansing. They receive no compensation for their services either from their employers or the Association, nor are they reimbursed for their expenses. They contribute their time and expenses on a voluntary basis. If this is a reportable item, is it reportable at the Association, municipal, individual level, or a combination thereof?"

Since the cooks are not compensated or reimbursed by either MMEA or their employers, there is no expenditure being made. Also, they are not lobbying. Their time is not reportable.

- "7. Must attending Members and Associate Members report under the terms of the Act even if they do not attempt to influence legislation or administrative action? Would an affidavit to the effect the (sic) no "lobbying" was conducted signed by those Members and Associate Members who attended have any relationship to the reporting requirements, or is it assumed that such a function is lobbying on its face?"

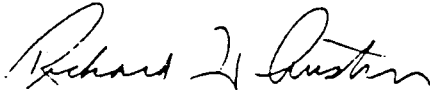
Attending members and associate members do not report their respective \$50.00 donations as stated in the answer to your fourth question. This is true even if they do lobby and are reimbursed by their employers. Consequently, an affidavit is not needed to prevent the donations from being reported.

However, any lobbyist agent who actually lobbies at the reception would report any compensation received for the time spent lobbying. Also, any expenditures made or reimbursed for the lobbying would be reported. A person who is not a lobbyist agent would count toward his or her threshold any compensation or reimbursement received.

Mr. S. Don Potter
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This response constitutes a declaratory ruling relating to the specific facts and questions you have presented.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard H. Austin".

Richard H. Austin
Secretary of State

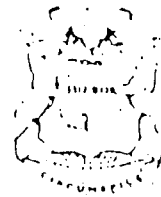
RHA/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



10-134-L1

LANSING

MICHIGAN 48918

February 7, 1984

The Honorable Gary M. Owen
Speaker of the House
State Capitol Building
Lansing, Michigan 48909

Dear Representative Owen:

This is in response to your request for a clarification and interpretation of issues concerning the lobby law (the "Act"), 1978 PA 472. Since you ask several questions, they will be answered as presented.

I.

"Lobbyists, from time to time, because of their expertise in a given field, may be called upon by a public official to provide technical assistance or research. The question is:

Is research and technical material having a value exceeding \$25, that is compiled by a lobbyist at the behest of a public official, to be used in deciding the propriety of legislation, a gift within the meaning of section 4 of the Act?"

Lobbying is in part defined in section 5(2) of the Act (MCL 4.415) as " . . . communicating directly with a public official . . . for the purpose of influencing (legislation)" Subsection (3) of section 5 defines influencing to include " . . . the providing of . . . information, statistics, studies, or analysis." Pursuant to the legislative mandate of section 16 (MCL 4.426) this office has promulgated rule 1(1)(d)(iv) (1981 AACSR 4.411) which defines expenditures for lobbying to include:

"(iv) An expenditure for providing or using information, statistics, studies or analysis in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

The Michigan Court of Appeals in Pletz v Secretary of State, 125 Mich App 335, 369 (1983) in upholding this rule adopted the statement:

"To eliminate the 'but for' rule, 1(d)(iv), is to eliminate information on a major expenditure. With today's complex society and better educated and more sophisticated public officials, it is information, statistics, studies, and analysis that are major tools for the lobbyists and lobbyist agents' art. When the expenditure for the information, statistics, studies, or analyses would not have been incurred but for the direct communication, the expenditure is as much a part of the direct communication as eyeball to eyeball communication."

Thus it is quite clear that providing information as contemplated by your question is lobbying and its cost is an expenditure and not a gift.

II.

"Many conflicts may arise between a public official and long-time personal friends or family members who may also be 'lobbyists,' or 'lobbyist agents,' as defined by the Act. The following are a series of questions to help clarify allowable activity within those relationships.

May a 'lobbyist,' 'lobbyist agent,' etc., give a gift or present to a public official and his/her spouse that exceeds \$25.00 on the occasion of:

- (a) a wedding of the public official?
- (b) a wedding involving a member of the public official's immediate family?
- (c) an anniversary (wedding or otherwise) of a public official?
- (d) a birthday of a public official?
- (e) a catastrophic event such as a terminal illness within a public official's family? and
- (f) a foundation or charitable trust set up in honor, or at the behest of, the public official?"

The issues raised in this question fall into four distinct categories. These categories would involve gifts or presents that would be made (a) to a public official (b) to a public official's immediate family, (c) to more than one person including a public official, and (d) to a foundation or charitable trust set up in honor or at the behest of the public official. Three different provisions must be read together to answer your question: the definition of gift in section 4(1) (MCL 4.414), the prohibition against the making of gifts by lobbyist and lobbyist agents in section 11(2) (MCL 4.421), and the clarification that lobbyists and lobbyist agents may give gifts to people who are not public officials in rule 71 (1981 AACCS 4.471). The Michigan Court of Appeals in Pletz specifically viewed section 11(2) as prohibiting gifts by lobbyist or lobbyist agents to public officials only:

"Contrary to plaintiffs' position on this issue, the above-quoted sec-

tion of the act does not prohibit a lobbyist or lobbyist agent from making a gift to an individual who is not in the category of public official. It would defy credulity to believe that the Legislature intended to forbid lobbyists from making gifts to relatives, friends, or any other non-public official. A reasonable interpretation of this section is that only loans and gifts made by lobbyists or lobbyist agents to public officials are regulated. This section must be read in conjunction with the act's related provisions. In so doing, we interpret the statute to exclude from coverage gifts by lobbyists or lobbyist agents to non-public officials." 125 Mich App 335, 358

Under this interpretation only gifts to public officials are specifically prohibited by the Act. Thus, in answer to your specific inquiry, gifts would be prohibited under the circumstances listed in subpart (d) of your question. An immediate question arises in the event a gift is given to the public official's immediate family by a lobbyist or lobbyist agent. Care must be taken by the public official that he/she does not receive benefit from the gift, "anything of value (exceeding) \$25.00 in any 1-month period." With this caveat in mind a gift to a member of the public official's immediate family is permissible, as in subparts (b) and (e) of your question. Where a gift is given to more than one person which includes a public official, i.e., a public official and spouse, then the gift will be deemed to be shared equally among all members of the group and the "share" of the public official must not be of value exceeding \$25.00 in any 1-month period. Thus gifts as outlined in subparts (a) and (c) would be allowed as just described as long as the value of the gift did not exceed \$50.00.

The final part of your question involving foundations or trusts must be looked at again with the criteria set forth in the Act. It is clear that a lobbyist or lobbyist agent may make a gift to a foundation or charitable trust where no benefit prohibited by the Act goes to the public official either now or in the future. For example, a lobbyist may make a donation to the American Cancer Society in any amount in the name of the public official. Thus, the answer to subpart (f) of your question is a qualified yes.

In the area of gifts, the public official must always keep in mind the intent of the Act. He/she must not accept " . . . a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value . . . " in violation of the Act. Gifts that are given to a non-public official where the intent is to benefit the public official are not permitted. Gifts to another person in any amount are allowed if it appears from all the facts that there is no intention to circumvent the Act.

III.

"Many questions have arisen regarding the interpretation of 'Honorarium' as found in Rule 4.473. The Rule reads as follows:

'An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received.'

The questions regarding this provision are as follows:

1. What is meant by the phrase '...clear from all of the surrounding circumstances...'? In other words, what circumstances will be looked upon by your office when making this determination?
2. (a) Are expenses, such as meals, travel arrangements and lodging accommodations included in the term honorarium?
(b) If not, then are they considered 'gifts' within the meaning of section 4 of the Act?
3. What amount of money, or anything of value, will be considered unreasonable as an honorarium for:
(a) one speech?
(b) more than one speech?
(c) one seminar?
(d) weekend participation in a conference?
4. What criteria will be used when determining whether the travel and lodging expenses of a public official are reasonable?

That is, will such criteria as location of the conference or convention be taken into account? Whether the public official travels first class or coach, or whether the average of all charges of lodging accommodations in the area must be taken into account before deciding upon a motel/hotel?"

The definition of "gift" in section 4(1) of the Act would include honoraria, "unless consideration of equal or greater value is received therefor." The Department's rules address honoraria in rules 1(1)(e) and 73 (1981 AACS R4.411, R4.473):

"Rule 1(1)(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.

....

"Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

Section 11(2) and rule 71 prohibit a lobbyist or lobbyist agent from giving a gift to a public official.

Rule 1(1)(e) clearly specifies travel expenses, meals, and necessary lodging, as long as they are actual expenses, are not payments and, therefore, are not honoraria. All actual travel, meal, and necessary lodging expenses advanced or reimbursed by a lobbyist or lobbyist agent are excluded from honoraria.

A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is \$500.00 or more, the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c) (MCL 4.418).

With respect to using a standard mileage rate for automobile travel, actual expenses are excluded. However, actual automobile expenses can be difficult to compute if insurance, depreciation, tire wear, etc. are included. Therefore, the Department will assume the mileage rate paid legislators when reimbursed with state funds (currently \$0.295 per mile) is not more than the actual cost of automotive travel. Any greater figure must be supportable by the actual costs to operate the vehicle driven.

Section 11(2) and Rule 73 both indicate payment for an honorarium does not violate the Act if it does not exceed the value of the speech provided by the public official. In determining the value of a speech, the public official must look at what other similar speakers in similar circumstances receive for a similar speech. The facts in a particular situation will determine the "all surrounding circumstances" as mandated in Rule 73 and must be judged as these situations arise.

To the extent that an honorarium exceeds the value received by a lobbyist or lobbyist agent paying the honorarium, a gift is made in violation of the Act. If the excessive honorarium is paid by a person who is not a lobbyist or lobbyist agent, the Act does not apply to the transaction, unless the excess is a payment made to influence legislative or executive action. Should the excess be paid by a non-lobbyist or non-lobbyist agent to influence legislative or executive action, the amount of the excess would be counted towards the person's \$250.00 and \$1,000.00 thresholds.

IV. -

"The following question concerns the reporting requirements imposed upon lobbyists. As you know, some lobbyists serve many clients, otherwise known as multi-client lobbyists. The question is:

If a lobbyist provides food and beverage for immediate consumption and the lobbyist has many clients and many employees, who must report expenditures made for the provision of food or beverage on behalf of a public official?

- (a) client of lobbyist?
- (b) lobbyist?
- (c) lobbyist agent or employee?"

Section 8(1) of the Act requires that lobbyists and lobbyist agents file reports as prescribed by the Act. Section 5(6)(a) includes in the definition of "representative of the lobbyist" an employee of the lobbyist or lobbyist agent. Section 8(1)(b) includes in reports to be filed by a lobbyist or lobbyist agent the expenditures made by a representative of the lobbyist. Under rule 23(3) (1981 AACS R4.423) an employee of a lobbyist agent may also become a lobbyist agent and may also have to file reports under section 8, if he/she exceeds the \$250.00 threshold amount established in section 5. The terms client or client of a lobbyist are not defined in the Act but in the context of your question it is assumed that by those terms you mean a person who makes expenditures for lobbying. Such a "client" under the provisions of the Act would be a lobbyist and be required to make the necessary reports. A "multi-client lobbyist" is a lobbyist agent under the Act and also is required to make reports.

Much of the confusion surrounding the terms lobbyist agent results from the Act establishing definitions which are different from commonly understood meanings in use prior to the Act. Under the Act, for example, where manufacturing company, ABC, Co. hires XYZ, Inc. to further its interests before the Legislature then ABC, Co. is a lobbyist and XYZ, Inc. is a lobbyist agent. If XYZ, Inc. has among its personnel J. Smith, who regularly communicates directly with public officials, J. Smith is also a lobbyist agent. When J. Smith purchases food or beverage for a public official with his/her own money or credit card, J. Smith would report the expenditure in the food and beverage category. If either ABC, Co. or XYZ, Inc. reimburse J. Smith for the food and beverage, that person would report the reimbursement as an all other lobbying expense. If XYZ, Inc. reimburses J. Smith and ABC, Co. reimburses XYZ, Inc., each would report its own reimbursement as an all other lobbying expense. When J. Smith purchases food or beverage for a public official with a credit card or tab charge in the name of ABC, Co., the food and beverage expense would be reported by ABC, Co. If the credit card or tab charge is in the name of XYZ, Inc., the expense would be reported by XYZ, Inc. If ABC, Co. then reimburses XYZ, Inc., then ABC, Co. would report the reimbursement as an all other lobbying expense.

XYZ, Inc. may also employ D. Brown who is a clerical person in its office and who is occasionally reimbursed by XYZ, Inc. for lobbying or food and beverage expenses, but he/she does not reach the Act's threshold amounts. D. Brown would be an employee of the lobbyist agent and those expenditures would be reported by XYZ, Inc. If ABC, Co. reimburses XYZ, Inc. for D. Brown's expenses, then ABC, Co. would also report the expenditure as an all other lobbying expense. On the other hand, if ABC, Co. pays the restaurant for the meal (for instance, D. Brown uses ABC, Co.'s credit card) or reimburses D. Brown directly for the meal (rather than reimbursing XYZ, Inc.), D. Brown would be a representative of the lobbyist. Under these circumstances, ABC, Co. would report the expenditure or reimbursement as a food and beverage expense, and XYZ, Inc. would not report the cost of the meal.

Where a person under any of the defined groups described above is required to report expenditures for food and beverage, the reporting category is determined by whether the payment is reported by another party. If a lobbyist or lobbyist agent pays for the food and beverages directly to the restaurant or other business that has provided the comestibles, the expenditure would be reported as "Food and Beverage" on the lobby registration schedule A. Any person who reimburses these expenditures would report the expenditures in the category "all other expenditures", unless the person being reimbursed is not a lobbyist agent who is reporting the meal as a food and beverage expense. This insures that each meal is reported as food and beverage only once.

V.

"The next two questions deal with public officials who are also members of organizations which engage in lobbying activity, e.g., Chamber of Commerce, National Organization of Women.

1. If a public official is a member of an organization which meets the lobbying requirements according to the Act, and that public official is provided travel and expense money for the purpose of furthering the goals of that organization, is that public official:
 - (a) in violation of section 11 of the Act?
 - (b) solely acting as a member of that organization?
 - (c) receiving a gift as a public official?
2. If a public official is reimbursed for his/her expenses when seeking to influence legislation while in the course of his/her official duties, must that public official comply with the registration and reporting requirements which apply to lobbyists?"

For purposes of your question the discussion here will be limited to Legislators. The inclusion or exclusion of other public officials will be

decided as the particular facts of their circumstances arise. Section 11(4) provides that:

"(4) A public official, other than an individual who is appointed or elected to a board or commission and is not an ex officio member or prohibited by law from having other employment, shall not accept compensation or reimbursement, other than from the state, for personally engaging in lobbying. A person who violates this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both."

This section makes it quite clear that a Legislator cannot have his/her expenses reimbursed by anyone other than the state. A Legislator who engages in activities that would normally be considered lobbying does not have to report his/her salary or state reimbursed expenses since a Legislator cannot be a lobbyist or lobbyist agent under section 5(7)(b). Where that Legislator is a member of an organization that engages in lobbying and the Legislator is furthering the goals of that organization which are not of a lobbying nature, the Act does not prohibit the payment of travel and expenses by the organization. Reimbursement of actual expenses would not be a gift since the organization would receive value equal to the reimbursement. But where the Legislator engages in lobbying activities for the organization of which he/she is a member, section 11 would prohibit payment for these activities. Since payment for these activities is unlawful, the reporting requirements of the Act are inapplicable.

VI.

"The Secretary of State has gone on record as saying that if a lobbyist makes an expenditure of \$150 or more on any one public official in a calendar year, the name and title of the public official must be included in the report the lobbyist prepares for the Secretary of State.

Given the fact that there is a \$25-per-month exemption from reporting for food and beverage that is meant for immediate consumption that is provided a public official, and that there are two reports to be issued annually by the lobbyist to the Secretary of State, should not the exemption for a calendar year be \$300 instead of \$150 (12 months x \$25 = \$300)?

Instead of \$150 per calendar year, should it not be \$150 per reporting period (12 months x \$25 = \$300)? Three hundred dollars divided by two reporting periods equals \$150 per reporting period."

Rule 56 (1981 AACS 4.456) provides that:

"Rule 56. (1) A lobbyist or lobbyist agent filing a statement or report under section 8 of the act shall, in determining the total

amount expended for the category termed food and beverage for public officials, report 1 amount reflecting all expenditures for food and beverage provided to public officials during a reporting period, regardless of amount.

(2) The itemized information required by section 8(2) of the act shall be reported in each applicable case."

Section 8(2) establishes threshold amounts that determine whether reports of expenditures for food and beverage provided a public official need identify the public official by name. These amounts are a twofold test (a) \$25.00 in any month or (b) \$150.00 during a calendar year. Under this test if the covered expenditures for example, exceed \$25.00 in May of 1984, reporting would occur in the report that covers the period December 31, 1983 to July 31, 1984. In further example, if there were expenditures in April, May, July, August, September, November and December 1984, none of which exceeded \$25.00 but in aggregate exceeded \$150.00 then the expenditures would have to be reported in the report covering the calendar year 1984. Where the \$25.00 or \$150.00 threshold amounts are exceeded and reported in the first reporting period, they are again reported as part of a cumulative total in the report covering the calendar year.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



9-84-LI

LANSING

MICHIGAN 48918

February 7, 1984

Dr. Martha Bigelow
Director
Michigan History Division
Third Floor, Mutual Building
Lansing, Michigan 48918

Dear Dr. Bigelow:

This is in response to your inquiry concerning the applicability of the lobby act (the "Act"), 1978 PA 472, to the participation of Department of State personnel in the Friends of the Capitol (the "Friends").

You indicate you, Kathryn Eckert (the Historic Preservation Supervisor), and Brian Conway (Historical Architect) are involved with the Friends. You serve on the Board of Trustees, Ms. Eckert is Treasurer and serves on the Executive Committee, and Mr. Conway serves on the Preservation Committee. All three of you support the Friends at least partly because of your employment with the Department. The Capitol is a building of historical significance to Michigan. While you might volunteer your time if you did not work in the History Division, there would always be representatives of the History Division participating in the Friends.

A lobbyist is a person whose expenditures for lobbying exceed a threshold, and a lobbyist agent is a person who is compensated or reimbursed for lobbying in excess of \$250.00 in a twelve month period. Lobbyists must report expenditures, and lobbyist agents must report compensation and reimbursement. Once your total compensation and reimbursement for lobbying from all sources exceeds \$250.00 in twelve months, you must register as a lobbyist agent and file biannual reports. Similarly, the person who compensates or reimburses you for lobbying (the Department or the Friends) becomes a lobbyist and must report the compensation or reimbursement once it spends in a twelve month period more than \$250.00 lobbying a single public official or \$1,000.00 for all lobbying.

Volunteer lobbying efforts where the person doing the lobbying is not compensated or reimbursed is not counted toward the lobbyist or lobbyist agent thresholds and is not reported. To the extent you lobby on your own time, and are not reimbursed for expenses, and do not spend your own money lobbying (other

than the cost of travel), you do not need to keep records or report your lobbying activities. However, when you lobby for the Department, are compensated for your time by the Friends, or are reimbursed for your expenses by the Department or the Friends, records and reports of your activity must be made. Compensation and reimbursement for lobbying includes time spent directly communicating with public officials and time spent preparing for the direct communication.

You, Ms. Eckert, and Mr. Conway are all professional, salaried employees of the Department of State. As such, you are not eligible for overtime pay and are expected to perform your job outside normal business hours, if necessary. Therefore, if you are a lobbyist agent for the Department, all lobbying consistent with your position in the Department is compensated lobbying time. You cannot lobby after normal business hours and consider it volunteered time. The important issue is whether you or your employees are lobbyist agents for the Department. Once you are, you are recognized as an official spokesperson for the Department before public officials.

In actuality, none of you is a registered lobbyist agent for the Department. The Department has made a conscious decision to concentrate its lobbying efforts in as few employees as possible. Because you are not an official spokesperson for the Department, at least for the purpose of relaying the Department's position to public officials, lobbying activities are not duties for which you are compensated by the Department. As lobbying is not part of your job, you are able to volunteer your time to lobby for outside organizations, such as the Friends. To lobby for the Friends without your activity being reportable by the Department, you must do all of the following:

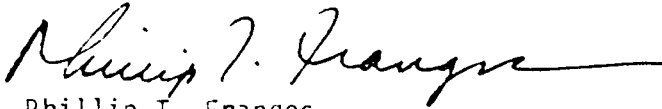
- 1) Lobby outside normal working hours or take annual leave for the time you lobby.
- 2) Identify yourselves as board members of the Friends.
- 3) Not identify yourselves as employees or representatives of the Department or the History Division.
- 4) If the public official is aware of your employment by the Department, expressly state that you are not espousing the Department's position.
- 5) Limit your communication with the public official to the business of the Friends.

Of course, you may choose the simpler method of absenting yourselves from any direct communication with public officials or preparation of materials used to directly communicate with public officials.

Dr. Martha Bigelow
Page 3

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in black ink, appearing to read "Phillip T. Frangos", with a long horizontal flourish extending to the right.

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 23, 1984

Conrad L. Mallett, Jr.
Director, Legal and Governmental
Affairs
Brian P. Henry
Assistant Legal Advisor
Office of the Governor
State Capitol
Lansing, Michigan 48909

Dear Messrs. Mallett and Henry:

This is in response to your letter of January 11, 1984, raising questions with respect to the application of the lobby act, 1978 PA 472, (the "Act"), to employees of the Department of Social Services who prepare materials used in lobbying but do not themselves communicate directly with any public official.

The specific issues which concern you are set forth in your letter as follows:

- "A. Whether a person who is compensated for the preparation of materials for use in lobbying but who does not personally communicate directly with any public officials on the department's behalf, must be named in section 6 of Form LR-1 as a person who is 'employed, reimbursed or compensated for lobbying.'"
- "B. Whether a person who is reimbursed in excess of \$250 in a year for preparing materials for use in lobbying but who receives no compensation for personally communicating with a public official is a 'lobbyist agent' as defined in the act and must register with the Department of State and report his/her expenditures to the department for inclusion in the department's periodic reports."

The Act establishes registration and reporting requirements for certain defined persons. Those defined as lobbyist agents are persons who receive payment for engaging in lobbying as defined in section 5(1) of the Act (MCL 4.415). The pertinent portion of the definition states lobbying:

" . . . means communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Section 5(4) of the Act and Rule 24 of the rules promulgated to implement the Act, 1981 AACRS R4.424, make it clear that a state executive department is a lobbyist.

Section 8 of the Act (MCL 4.428) sets forth the reporting requirements for lobbyists and lobbyist agents. The rules include a definition for the terms "expenditures related to the performance of lobbying" and "expenditures for lobbying." Rule 1(d), 1981 AACRS 4.411(d) states as follows:

"(d) 'Expenditures related to the performance of lobbying' and 'expenditures for lobbying' includes all of the following expenditures of a lobbyist or lobbyist agent:

(i) A payment made on behalf of a public official for the purpose of influencing legislative or administrative action.

(ii) A payment made to influence legislative or administrative action.

(iii) Actual expenses for lobbying other than travel expenses, whether received in the form of an advance or subsequent reimbursement.

(iv) An expenditure for providing or using information, statistics, studies, or analysis in communicating directly with an official that would not have been incurred but for the activity of communicating directly."

A person that makes such expenditures is required to keep records and file reports after meeting the thresholds set forth in the Act. If expenditures take the form of compensation to a person for the preparation of materials for use in lobbying, the expenditures must be reported by the lobbyist or lobbyist agent paying the compensation.

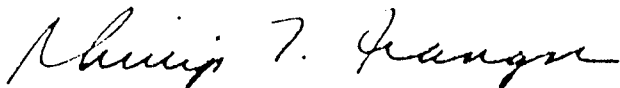
An individual who does not directly communicate with any public official is not a lobbyist or lobbyist agent. Such an individual should not be included in the listing of persons in section 6 of Form LR-1. In addition, a person who does not directly communicate with any public official is not required to register as a lobbyist agent under the Act.

In advising various persons regarding the Act's provisions the Department has attempted to make it clear that compensation paid to support staff such as those you have asked about must be reported pursuant to the Act's provisions even though the individuals receiving the compensation or reimbursement are not themselves required to register or report.

Messrs. Mallett and Henry
Page 3

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos".

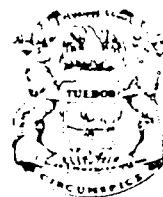
Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 22, 1984

George F. Hill
Consumers Power Company
212 W. Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Hill:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the relationship between Consumers Power Company and its employees who are also public officials.

Specifically, you indicate Consumers Power Company is a lobbyist as defined in section 5(4) of the Act (MCL 4.415). The company employs several individuals who are members of state boards and commissions and therefore public officials who can be lobbied under the Act. Consumers Power "will be paying these employees wages and reimbursing them for meals and beverages. These meals may be purchased for the employee when he or she is out of town on Company business, when he or she works overtime or when he or she takes a party out to lunch or dinner for purposes of conducting Company business. On none of these occasions would the employee be conducting or engaged in any activity connected to his or her position on the state board or commission."

Your questions relating to these facts are set out and answered below.

- I. "Is Consumers Power Company as a lobbyist required to report as financial transactions all payments of wages, including expense account reimbursement paid to employees who are public officials?"

"Financial transaction" is defined in section 3(3) of the Act (MCL 4.413) as a "loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value."

Pursuant to section 3(1) of the Act (MCL 4.418), a lobbyist must file reports on January 31 and August 31 of each year. In addition to other information required by this section, each report must include the following:

"Sec. 8. (1)(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods and services having value of at least \$500.00 are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred."

As you note, the disclosure required by this section is not limited to financial transactions made for the purpose of lobbying. However, section 8(1)(c) does exempt financial transactions between a lobbyist and a public official "in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist."

"Ordinary course of business" is defined in Black's Law Dictionary as a normal or usual matter "which transpires as a matter of daily custom in business." The payment of an employee's wages and reimbursement of an expense account fall within this definition. Since Consumers Power Company's primary business is not lobbying, payment of wages and expenses in the specific circumstances you describe are financial transactions in the ordinary course of business which are exempt from disclosure under section 8(1)(c), provided the payments do not exceed the value of the consideration received by the company.

II. "Is Consumers Power Company as a lobbyist required to account for all expenditures for food and beverage provided its employees who are public officials?"

Section 8(1)(b)(ii) and rule 56, 1981 AACRS R4.456, require a lobbyist to report expenditures for food and beverages provided for public officials. There is no exemption for food and beverage expenditures incurred in the ordinary course of business or for non-lobbying purposes. The reason for this approach, as explained by the Court of Appeals in its discussion of financial transactions in Pletz v Secretary of State, 125 Mich App 335 (1983), is that food and beverage expenditures "even where unrelated to a particular policy issue, may affect the recipient's inclination on matters of interest to the lobbyist."

This rationale does not apply to an employer/lobbyist who provides food and beverage to an employee while "conducting company business." Payment or reimbursement of meal expenses is part of the employee's ordinary compensation and